IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1167 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SAGAR ARJAN JETHA

Appearance:

Ms Harsha Devnani, APP for Petitioner

MR Jiten Buddhbhatti for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 19/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The acquittal of the respondents of the offences punishable under sections 307, 325 read with Section 34

of Indian Penal Code and sections 25 (1)(A) of the Arms Act, recorded by the learned Asstt.Sessions Judge, Jamnagar vide judgment dated September 30, 1985 rendered in Sessions Case No.46/84, is the subject matter of challenge in the present appeal which is filed under section 378 of the Criminal Procedure Code, 1973.

2. The incident in question took place on January 2, 1984 between 7. a.m. to 7.30 a.m. at village Retha Kalavad, Taluka Bhanwad, District Jamnagar. According to the prosecution, 20 days before the date of incident, respondent no.1 had demanded a sum of Rs.5000/- from Gova Sava, who is the uncle of the complainant Vashram Ramde. As Gova Sava did not agree to give the amount to respondent no.1, respondent no.1 gave threats to Gova Sava. This demand of money and threats given by respondent No.1 was narrated by Gova Sava to his nephew Vashram Ramde. Therefore, five days before the incident, complainant-Vashram had scolded respondent no.1. According to the prosecution, on the date of incident, when complainant Vashram was passing through the village, respondent no.1 who was armed with tamancha, fired a shot at him whereas respondent nos 2 to 4 who were armed with sticks caused injury to father of the complainant Vashram who had intervened to save his son. Injured Vashram and his father were removed to Jamkhambhalia Government Hospital where on receipt of information from Medical Officer, FIR of injured Vashram was recorded by Mr A K Sharma, PSI, Jamnagar City 'B' Investigation Branch. As the incident had taken place within the jurisdiction of Bhanvad police station, Mr Sharma had forwarded the information given by Vashram to Bhanvad police station for further action. The FIR lodged by Vashram was investigated by Mr K B Kyada who was PSI at Bhanvad police station. At the conclusion of investigation, the respondents were charge-sheeted for the offences punishable under sections 307, 325 read with section 34 of IPC and section 25(1)(A) of Arms Act. As offence punishable under section 307 of IPC is exclusively triable by Court of Sessions, the case was committed to Sessions Court, Jamnagar for trial, where it was registered as Sessions Case No.46/84. The learned Asstt.Sessions Judge, Jamnagar had framed charge against the accused at Exh.2 for the offences punishable under section 307 and 325 read with section 34 of IPC and section 25(1)(A) of Arms Act. The charge was read over and explained to respondents who pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined (1) Dr. Bharatkumar B Shah, PW 1, Exh.9 (2) Dr. Gopaldas M Raithatha, PW 2, exh.12 (3) Vashram Ramde, PW 3, Exh.32, (4) Ramde Naga, PW 4,

exh.34, (5) Duda Megha, PW 5, exh.35, (6) Duda Karal, PW 6, exh.36 (7) A K Sharma, PW 7, exh.37, (8) Jaysukh, PW 8, exh.38 (9) Lakhu Megha, PW 9, exh.40 (10) N B Jadeja, PW 10, exh.42 (11) K B Kyada, PW 11, exh.43 and Dr. N K Jani, PW 12, Exh.47 and also produced documentary evidence such as FIR lodged by Vashram Ramde, medical certificates issued regarding injuries sustained by Vashram Ramde and Ramde Naga, the discovery panchnamas etc. to prove its case against the respondents. After recording of evidence of prosecution witnesses was over, the learned Judge recorded statement of the respondents under section 313 of the Criminal Procedure Code. In their statements the respondents denied the case of the prosecution and the respondent no.1 stated before the Court that on the date of incident when he had been to the shop of Jayendra for eating pan, Vashram Ramde had caused injury to him on left shoulder with a stick, as a result of which he had fallen down and Savdas who had tried to intervene was also injured by vashram, as a result of which he apprehended injury to his person by Vashram and, therefore, in order to save his life, he had fired a shot but did not know as to which injury was caused and on which part of body of Vashram. The respondents did not examine any witness in support of their defence. On appreciation of evidence adduced by the prosecution, the learned Judge concluded that the incident had not taken place in the manner in which it was suggested to have happened by the prosecution and the prosecution witnesses had not offered any explanation regarding injuries sustained by the respondents. The learned Judge, therefore, held that the plea of self-defence was probablised. In that view of the matter, the learned Judge has acquitted the respondents vide judgment dated September 30, 1985 giving rise to the present appeal.

3. After taking us through the evidence on record, Ms. Harsha Devnani, learned APP submitted that the testimony of injured Vashram is not only corroborated by evidence of another injured witness Ramde Naga but also by medical evidence and, therefore, the respondents ought to have been convicted of offences punishable under sections 307, 325 read with section 34 of IPC and 25(1)(A) of Arms Act. According to the learned APP for the State, the respondents were aggressors and as they had picked up a quarrel and attacked Vashram as well as his father Ramde, the respondents were not entitled to plead self-defence. In the alternative, the learned Counsel after referring to medical evidence emphasised that the respondents having exceeded the right of private defence, ought to have been convicted of the offences

with which they were charged. What was claimed was that minor contradictions appearing in the evidence of prosecution witnesses should not have been highlighted by the learned Judge to disbelieve the case of prosecution and the appeal should be accepted.

4. Mr Jiten Buddhabhati, learned Counsel for the respondents pleaded that the evidence of Dr. Bharatkumar B Shah, PW 1, exh.9 would indicate that injured Vashram had also given name of Gova Megha as one of his assailants and as the said witness has a tendency to implicate innocent persons falsely and exaggerate the incident, he is rightly disbelieved by the learned Judge. The learned Counsel after reading evidence of Dr. B B Shah, further submitted that the injuries sustained by injured Vashram by firing shot were not capable of causing his death or endangering his life and, therefore, the charge under section 307 of the Code was totally misconceived. What was emphasised by the learned Counsel for the respondents was that the plea of self-defence taken by the respondent no.1 in his statement recorded under section 313 of the Code is probablised by the injury sustained by respondents regarding which no explanation is offered by any of the prosecution witnesses and, therefore, the appeal should not be accepted. Learned Counsel also argued that even if two views are possible, the view taken by the learned Judge being reasonable, should not be interfered with in the present acquittal appeal.

5. We have heard the learned Counsel for the parties and taken into consideration the evidence on record. The evidence of Dr. B B Shah clearly establishes that at the time when injured Vashram Ramde was brought before him for treatment, he had recorded history of assault and Vashram had stated before Doctor that he was also injured by Gova Megha. Admittedly, Gova Megha is not implicated as one of the accused nor Vashram has stated in his evidence before the Court that Gova had caused any injury to him. This part of the evidence of the Medical Officer establishes that the injured has tendency to implicate innocent persons falsely in serious cases and exaggerate the things. The statement made by the Medical Officer during the course of cross-examination would further establish that the injuries sustained by injured Vashram as a result of shot fired from tamancha at him, were not capable of causing death or endangering his life. Further the evidence of Dr. G M Raithatha, PW 2 shows that respondents No.1, 2 and 3 had sustained injury by hard and blunt substance regarding which no explanation is offered by any of the prosecution witness. Therefore,

the principles laid down by the Supreme Court in the case of Laxmisingh & Ors v. State of Bihar reported in AIR 1976 SC 2263 would be applicable to the facts of the present case. It will have to be held that the prosecution has suppressed the genesis and the origin of the occurrence and has thus, not presented the true version, and the case of respondent No.1 that injured Vashram Ramde had caused injury to him and, therefore, he had fired shot from tamancha to save his life is rendered probable because of non-explanation of injuries sustained by respondents no.1 to 3. Non-explanation of injuries sustained by respondents no.1 to 3 throw a serious doubt on the prosecution case. The evidence of witness Duda Megha would indicate that actually a fight was going on between the injured Vashram and his father on the one hand and the respondents on the other. Thus, the prosecution having suppressed the origin and the plea of self-defence having been probablised, the appeal cannot be accepted. We are in general agreement with the view expressed by the learned Judge in the impugned judgment and we do not think it necessary to reiterate the reasons given by the trial court in this judgment. This is so, in view of the decisions of the Supreme Court in the case of State of Karnataka v. Hemareddy & Anr. reported in AIR 1981 SC 1417 and in the case of Girijanandini v. Bijendra Narain, reported in AIR 1967 SC 1124. The learned APP has failed to dislodge the reasons recorded by the learned Judge for acquitting the respondent and, therefore, the acquittal appeal cannot be accepted. This is an acquittal appeal. Although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as rule of prudence, the Appellate Court would always give proper weight and consideration to such matters as (i) The views of the trial Judge as to the credibility of the witnesses; (ii) Presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the reasonable benefit of any doubt; and (iv) slowness of an appellate court in disturbing a finding of fact arrived at by a Judge, who had the advantage of observing demeanour of the witnesses. The view taken by the learned Judge that the prosecution has failed to establish its case against the respondent beyond reasonable doubt is, in our view, eminently just and reasonable. Even if second view is possible, we would not be justified in interfering with the view taken by the learned Judge in the present acquittal appeal. The result of the discussion is that we do not find any

merits in the appeal.

6. For the foregoing reasons, the appeal fails and is dismissed. The muddamal is ordered to be disposed of in terms of the directions given by the learned Asstt.Sessions Judge in the impugned judgment.

19.3.2001 [J N Panchal, J.]
msp
[D P Buch, J.]